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Supreme Court of the United States

No. 1319

October Term, 1970

KENNEDY PARK HOMES ASSOCIATION INCORPORATED, COLORED PEOPLE'S CIVIC AND POLITICAL ORGANIZATION, INC., JAMES M. THOMAS, SAMUEL MARTIN, THE DIOCESE OF BUFFALO, N. Y.,

Respondents,

UNITED STATES OF AMERICA,

Intervenor-Respondent,

vs.

CITY OF LACKAWANNA, NEW YORK, *et al.*,

Petitioner.

BRIEF OF RESPONDENT, THE DIOCESE OF BUFFALO, N. Y., IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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TABLE OF CONTENTS.

	PAGE
Statement of the Case	1
The Petition for Certiorari	3
POINT I. The Petition states no reasons for a review by this Court	4
POINT II. The District Court's retention of jurisdiction and requirement of and permission for reports to it adequately protect defendants	5
Conclusion	5

CASES CITED.

None

CONSTITUTION AND STATUTES CITED.

Fourteenth Amendment of the Constitution of the United States	2
Civil Rights Act (42 U. S. C. 1983)	2
Fair Housing Act of 1968 (42 U. S. C. 3601)	2
Public Health and Welfare Law (42 U. S. C. 3613)	2

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Statement of the Case

The suit was brought by our client, The Diocese of Buffalo, N. Y. as landowner and intending vendor, and by the Kennedy Park Homes and Colored People's Civic and Political Organization as intending vendees, and by indi-

viduals intending purchases of homes, charging violations by the City of Lackawanna and its mayor and other officers of the Equal Protection and Due Process Clauses of the Fourteenth Amendment and by the Civil Rights Act (42 U. S. C. 1983) and the Fair Housing Act of 1968 (42 U. S. C. 3601 *et seq.*). The charge of the complaint was that defendants by enactments of various city ordinances and otherwise sought to restrict the use of the land involved and to deny its use for housing of members of minority groups, particularly negroes, and including the individual plaintiffs and the members of the Kennedy Park Homes and Colored People's Civic and Political Organization. The United States of America intervened as a plaintiff (42 U. S. C. 3613).

The trial before District Judge John T. Curtin lasted 22 days after which there was briefing and oral arguments. The District Court then filed its decision and order (see beginning at page 31, appendix to petition for certiorari). Most comprehensively and completely (61 printed pages) the District Judge discussed every aspect of the case and all the testimony. He concluded that all plaintiffs' charges of discriminatory intent and actions were fully proven and that all their excuses (including inadequate sewer and need for park) for their discriminatory actions and refusal to act were specious and untrue.

The District Court's order (see page 91, appendix to petition for certiorari) in order to remedy the situation found to exist, ordered defendants: (1) to execute and deliver a certain form or paper necessary for action by the Erie County Department of Health, and if said form should be disapproved by said Department of Health, to take immediately the necessary action to provide adequate sewerage service to the land in question; (2) to refrain from tak-

ing any steps to acquire for a public park the land in question; (3) to refrain from any acts to prevent the construction of the proposed dwellings and to take whatever steps are necessary to allow construction to begin; (4) not to issue any building permits for any other construction in the vicinity which would contribute additional sewerage to the city's sewers in the vicinity in question, until plaintiffs should be permitted to hook into the sewer system.

It is important to note that the District Court retained jurisdiction over the action until plaintiffs' proposed subdivision houses should be built, and ordered that defendants report to the Court from time to time as to what compliance steps they took and what problems were encountered, etc.

Defendants appealed to the Court of Appeals, Second Circuit, which in another comprehensive and convincing opinion unanimously sustained the District Court in all respects, conformed all the findings of fact below, and affirmed the District Court's order (opinion by Clark, Justice retired, page 12 appendix to petition).

The Petition for Certiorari

Petitioners have dropped completely all the arguments and contentions made below except one only. They assert only that the decision below interferes so much with the municipal governance of Lackawanna as to amount to a take-over of administration of the city's affairs, and that compliance with that order will be financially disastrous to the city.

POINT I

The petition states no reasons for a review by this Court.

It is clear that none of the kinds of reasons listed in Supreme Court Rule 19 are present here. There is no important questions of federal law, no conflict with applicable precedents, no general public interest, nothing unusual unprecedented or startling.

After elaborate proof which overwhelmingly supported plaintiffs' charges of racial discrimination, the District Court made, and the Court of Appeals affirmed, an order which was reasonable and moderate and, indeed, the least that would accomplish the necessary result.

In effect, the order affirmed below took up the two specious reasons assigned by defendants for their refusal to allow negro housing to be built (inadequate sewerage and need for park). As to sewerage, the order directed the City to furnish a form required by the County Health Department as to adequacy of the sewers and, if the Health Department would not, for sewerage reasons, allow the houses to be built, then the city should allow in the vicinity no other new building that would use the existing sewers. How else would the discrimination be dealt with? If the city should be allowed as it demands to continue issuing building permits to others than plaintiffs in the same vicinity, the Court would be condoning and continuing the very discrimination practices it was trying to stop.

In substance the City asks that because of financial difficulties it be allowed to continue the long neglect of its own problems as well as being allowed to continue blatant, overt discrimination.

As to the order's prohibition of setting up a park on the land in question, the Courts below found on convincing proof that the City had never intended to locate a park at the particular place, and that this was a mere pretense or pretext.

POINT II

The District Court's retention of jurisdiction and requirement of and permission for reports to it adequately protect defendants.

The affirmed order below not only retains jurisdiction of the cause but permits and requires reports to the Court of steps taken in pursuance of the order, and of difficulties encountered. Thus, defendants can at any time make application to the District Court to ameliorate any, especially onerous, situations that arise.

Conclusion

For the foregoing reasons the petition should be denied.

Dated: March 1, 1971.

Respectfully submitted,

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